

EXHIBIT 3 a

To

25 June 2007

Affidavit of Bias

Pursuant to 28 USC § 144

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x3 IN RE: SKI TRAIN FIRE
4 IN KAPRUN, AUSTRIA
-----xCASE NO.
01 MDL 1428 (SAS)5
6 New York, N.Y.
7 November 2, 2005
8 10:35 a.m.

9 Before:

10 HON. SHIRA A. SCHEINDLIN,
11 APPEARANCES
12 KOHN, SWIFT & GRAF, PC
13 Attorneys for Plaintiffs Habblett, et al.
14 BY: ROBERT A. SWIFT
15 (via telephone)
16 SPEISER, KRAUSE, NOLAN & GRANITO
17 Attorneys for Plaintiffs
18 BY: KENNETH P. NOLAN
19 NAGEL, RICE & MAZIE
20 Attorneys for Plaintiffs Habblett, et al.
21 BY: JAY J. RICE
22 EDWARD D. FAGAN
23 Liaison Counsel to Class Plaintiffs,
24 including Geier, Batori; and
All Non American Victims in Class cases
25 REED, SMITH, LLP
Attorneys for Defendant
Bosch Rexroth Corporation
BY: PAUL P. ROONEY
26 KIRKLAND & ELLIS, LLP
Attorneys for Defendants
Siemens Austria, Siemens AG, Siemens Corp.
BY: BRANT BISHOP

District Judge

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Conference

1 MR. FAGAN: All of the foreign plaintiffs, Judge.

2 THE COURT: Are the foreign plaintiffs here in the
3 absence of intervention? Till a motion to intervene is
4 granted, if it's ever granted, are they here? Do you have a
5 client to file this motion?

6 MR. FAGAN: Judge, they are here. They're here in the
7 Omnid glow case. There is an Omnid glow case that was filed by the
8 foreign plaintiffs. That -- actually, two cases, but by the
9 decedent families and by the survivor families. That case was
10 consolidated with the former class action. It is --

11 THE COURT: Batori and Geier.

12 MR. FAGAN: Batori and Geier originally was just a
13 case against Omnid glow. That case exists. It was consolidated
14 for procedural purposes with the class action.

15 THE COURT: There is no class action. You have moving
16 to intervene in what case?

17 MR. FAGAN: We are moving to intervene in the cases as
18 they relate to Siemens Corp and as they relate to Bosch Rexroth
19 Corp, the U.S. defendants.

20 THE COURT: So the case that you now have against
21 Omnid glow, foreign plaintiffs, Batori and Geier, are there any
22 other defendants in that case?

23 MR. FAGAN: No, Judge.

24 THE COURT: It's a one-defendant case.

25 MR. FAGAN: It's a one-defendant case for now, but

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Conference

1 based on what I outlined in the papers, we need to file a
2 Rule 60(b) motion as against American Cyanimide.

3 THE COURT: Which you haven't filed.

4 MR. FAGAN: No, I had to ask permission to file that.

5 THE COURT: Mr. Haesloop, you know about this case,
6 right? Of course.

7 MR. HAESLOOP: Well, your Honor, in my papers opposing
8 intervention --

9 THE COURT: Can we put intervention aside? He says,
10 intervention aside, he's got a straight-out direct lawsuit
11 against you. I don't have to worry about diversity, for
12 example. In the other case, if we must intervene, there's a
13 risk of destroying diversity because you'll have foreign
14 plaintiffs against foreign defendants, but in your case he says
15 it's a simple straightforward case of bunches of foreigners
16 against --

17 MR. HAESLOOP: Against Omnidglow.

18 THE COURT: Which is not a jurisdictional issue.

19 MR. HAESLOOP: That's correct.

20 THE COURT: So that case exists.

21 MR. HAESLOOP: That case does exist.

22 THE COURT: And there's no question about it. In
23 other words, no issue of intervention there. It's a case.

24 MR. HAESLOOP: There are many issues in that case.

25 THE COURT: But, I mean, it's an existing case.

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1 MR. HAESLOOP: It is an existing case. In Batori and
2 Geier, who are the very same plaintiffs that he's moving on
3 behalf of.

4 THE COURT: To intervene.

5 MR. HAESLOOP: Right.

6 THE COURT: But that's a different issue. I can make
7 it simpler. If he was denied intervention in the other cases,
8 he'd still have a case against you.

9 MR. HAESLOOP: That's correct.

10 THE COURT: That's good to clarify. And in that one,
11 he wants to file a motion today.

12 MR. HAESLOOP: That's what he wants to do.

13 THE COURT: For partial summary judgment which is
14 ready to go docket, and it's 10 days late.

15 MR. HAESLOOP: And his expert's affidavit that he's
16 going to base that motion on wasn't executed by his own expert
17 till October 21st, which is why he hasn't filed any motion, and
18 I think I'm entitled to the deposition and a Daubert hearing
19 before he files that motion.

20 THE COURT: Before he files the motion?

21 MR. HAESLOOP: Before he files the motion.

22 THE COURT: Frankly, I should care about that more
23 than you. Because all that filing starts a clock running,
24 doesn't affect you at all. You could say in order to respond
25 to a summary judgment under 56(e) or (f) -- I never get it

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1 right -- I'm entitled to certain discovery. So it doesn't
2 matter if he files it or not. I'm the only one who cares. I'd
3 like him not to in the sense of the clock running, but in this
4 case I'd like him to just to see that any date is kept. Though
5 that's really irrelevant to you. If you're entitled to
6 discovery, under the rule, you get it.

7 MR. HAESLOOP: And the other discovery I'll need from
8 him that's in my motion papers that's been raised before is the
9 fact that I've still not received on behalf of any of his
10 European clients the legal documents from Germany and Austria
11 that relate to the appointment of an estate.

12 THE COURT: You did raise that, and I have that here
13 in my outline. You say he lacks the capacity to pursue this
14 because none of these are the recognized representative of the
15 estate of the deceased -- decedents.

16 MR. HAESLOOP: That's right, and that discovery demand
17 was served in Batori and Geier, and I have not received the
18 response from them.

19 THE COURT: So far as you're concerned, the decedents'
20 cases, not people who are victims and alive, but decedents, you
21 have no proof yet that anybody's been appointed a legal
22 representative for the decedents.

23 MR. HAESLOOP: That's correct.

24 THE COURT: If you were to win and be right about all
25 that, there would still be the other case.

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1 MR. HAESLOOP: But I only have Mr. Geier's deposition.
2 We don't have the depositions of the other nine plaintiffs.

3 THE COURT: Well, what does it take to get those?

4 MR. HAESLOOP: Takes some cooperation from plaintiffs'
5 counsel to help me schedule them and bring them here. They
6 should come here for those depositions.

7 THE COURT: Not necessarily. Sounds right because
8 they're plaintiffs, but those rules are not, as you know,
9 immutable. Those rules can be adjusted by the Court at its
10 discretion if need be. I don't know if people are victims.
11 Maybe they're very injured. I don't know who these people are.
12 I don't know how injured they are. I don't know how able to
13 travel they are. I don't know whether it wouldn't be more
14 convenient to round them all up in one city or place and do
15 them at once rather than have nine different people travel to
16 the States.

17 So I don't know what progress you've made in getting
18 those. Is it only nine others?

19 MR. HAESLOOP: It's the nine other survivors other
20 than Mr. Geier. And when we went and did Mr. Geier's
21 deposition, it was because of a medical condition.

22 THE COURT: Right.

23 MR. HAESLOOP: His testimony during his deposition
24 when he was asked the following question: How long before your
25 heart attack did you stop taking your medications? His answer